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ABSTRACT

This paper reviews both the literature and the court litigation concerning student rights in elementary and high school. The purpose of the paper is to outline the legal aspects of the relationship of students to their teachers and administrators. Topics covered include the freedoms of speech and press, due process, "in loco parentis," dress standards, law enforcement limitations, discrimination, and corporal punishment. A separate chapter is devoted to the student rights case, "Tinker v. Des Moines Independent School District." (Author/LD)

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Student Rights

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Abstract

A review of both the literature and the litigation on the matter of student rights in elementary and high school. The purpose is to provide the teacher and administrator with a working knowledge of the legal aspects of their relationship with students. Topics covered include; freedoms of speech and press, due process, in loco parentis, dress standards, law enforcement limitations, discrimination, and corporal punishment.

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"Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take that risk. . ." (Tinker)

Section I

The TEXT

Chapter 1

INTRODUCTION

Especially in the last twenty years, there has been a growing trend of student unrest and disatisfaction due to the denial of their legal and constitutional rights. The Supreme Court has heard hundreds of cases on the subject in the past two decades, and their decisions have been increasingly favoring the students, and justifiably so--they are human beings and citizens of this free country just as much as the adults are.

But, this increasing trend toward liberality in the area of student rights has produced some incredible backlashings of increased student disorder and criminal activity. The schools seem to have, in many instances, lost control of their pupils and some even of their own facilities and buildings. The students know their rights and what they can "get away with."

This paper has only one main purpose: To briefly outline the rights of students with regard to the various different contraversial areas of student/teacher, and student/administrational interaction. These are very sensative areas, especially for the teacher. One should study them well, for an act of denial of the basic constitutional rights of a student can bring great sorrow and suffering to the unknowing teacher or administrator.

There is a possitive side to this new trend, of course. With the increased freedoms come better, more prepared, more expressive students ready for the real world, or college, or what-

ever the student's next endeavor in life will be. The liberated classroom is a factory of creativity, and the molds and forges should be kept in the peak of condition so as to allow the maximum outcome in production for the student.

Summarizing, the caged lion in the zoo is well behaved, safe from the world, and the world is safe from it. But is it really a lion, or is it simply a pelt stuffed with the essential vicera for maintaining life? A student well controlled, with all the old rules and stuffed shirt policies--is he really a human being?

In this paper several pertinent points and positions of student rights shall be examined. It would be unfeasible and by far and away too tedious to examine, even in brief, all the student's rights. Therefore, several keynote rights have been selected for examination, excluding perhaps some that others might deem important.

Some were omitted because of general concensus of the public at large recognizing as solved, at least in the aspects of constitutionality. One of these is racial discrimination, a problem or issue well accepted as unconstitutional, as compared with sex discrimination, a relatively new issue, and one not totally resolved to date. (See Chapter 9).

The format of the paper is simple; all footnotes reserved until the last, and rights are presented in order designed to maintain cohessiveness, not necesarily recognizing any one as more important than ony other. The TINKER case is refered to often, and was dedicated an entire chapter for explanatory purpcses.

Chapter 2

STUDENT RIGHTS

Progress is never unidirectional. Its effects are felt in many directions, and they are both possitive and negative. So has the progress in the area of student rights been, and the possitive effects and the negative just about balance out. This paper will, at times, seem to dwell on the negative, but that is only because therein lie the areas of greatest danger.

> "With respect to the appropriate remedy for students denied constitutional rights, the Supreme Court, 1975, held that school officials who discipline students unfairly cannot defend themselves against civil rights suits by claiming ignorance of students' basic constitutional rights. By a vote of 5-4, the Court further ruled that a school board member may be personally liable for damages 'if he knew or reasonably should have known that the action he took within his official sphere of responsibility would violate the constitutional rights of the student affected, or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to the student.'"[1]

Now, to the majority of the readers this statement will sound rather foreign, and they will think back on their educational past and wonder when this change took place, for it was evidently long after they had graduated. And is that not a shameful commentary on our system, that we should seem shocked to learn that a teacher or administrator can "get in trouble" for denying a student his constitutional, inalienable rights of freedom?

One legislator recognized the problem and put it this way:

> "One dimension of the problem is that the school authorities in many cases are denying students what the constitutions of the United States forbid

> from abridgement--namely, their substantive right to freedom of religion, speech, press, etcetera."[2]

Now, as mentioned earlier, there is more than one side to the effect that this new trend in the country has caused. On the negative end of the spectrum, of which the reader will hear quite a bit more throughout this paper, a Washington State legislator commented:

> "Students are being encouraged to challenge school authorities in the courts when their rights are denied, and school authorities increasingly are being informed by the courts that student allegations are correct. This creates an unhealthy student/school official relationship and encourages other student dissention."[3]

This is very true, it seems, and it is this very thrust of the students at large for rights that has caused the great new emphasis that would have made a thesis comparable to this one irrelevant twenty years ago.

But, no matter what the negative effects might be, we, as Americans, stand on the very foundations of free agency as a basis for our entire philosophy of government and of education. Connecting these two inseperable entities, Mr. Justice Jackson, of the Supreme Court, delivered this opinion in 1943:

> ". . .that they are educating the young for citizenship is reason for scrupulous protection of constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitude."[4]

Ergo, the emphasis of education is not merely dissemination of facts and philosophies from books, but the educator is called on to shape the youth's mind in terms of his feelings toward his country and government, according to this Justice, and who is there that would disagree.

In essence, student rights is a question of human rights.

The Fourteenth Amendment insures all citizens of the United States equal protection under the law, and that equality of legalitarianism refers to students as well as to teachers (see appendix B). This topic is of such magnificent importance that several chapters of this treatise are devoted to its discussion alone, as it relates to several rights in particular. All Americans deserve to have their rights protected and observed, no matter what their position in society:

> "If there is any fixed star in our Constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or free choice or force citizens to confess by word or act their faith therein."[5]

No one person had ever been given the right to impose his opinions or ideas on another, yet the teacher/student relationship of yesteryear this was as common as the ABC's. Now things are changing, as one will soon discern from the text of this paper.

Chapter 3

TINKER et al. V. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT et al.

Of all of the Supreme Court decisions made in the past concerning education, and the freedoms involved, excepting, perhaps, Brown v. Board of Education of Topeka, 1954, the most monumental and influential has been the case for which this chapter is entitled: The TINKER decision. It can be viewed in the light of two separate, but equally substantiable points of view: As the greatest breakthrough for education and personal equality, or as the most devastating breakdown in our egalitarianistic system yet registered.

The essence of this chapter shall be to examine this case in depth, and to present both outlooks. The decision has already been made, it is true, and knowing the evils it could engender will help in nothing to reverse any damage. But knowing the real workings of such a decision is paramount in our efforts to deal with its constricting characteristics. The majority of the evidence examined, and the quotes presented, will be from the text of the Supreme Court's official syllabus of reports, Their expressed opinions are illuminating and interesting, and they paint a much more vivid picture than interpretation could ever master.

The actual content of the decision is simple and straight forward. Argued on November 12, 1968--decided February 24, 1969.

"Petitioners, three public school pupils in Des Moines, Iowa, were suspended from school for wearing black armbands to protest the Government's policy in Vietnam. They sought nominal damages and an injunction against a regulation that the respondents had promulgated banning the wearing of armbands. The District Court dismissed the complaint on the ground that the regulation was within the Board's power, despite the absence of any finding of substantial interference with the conduct of school activities. The Court of Appeals, sitting 'en banc', affirmed by an equally devided court. Held:

"1. In wearing armbands, the petitioners were quiet and passive. They were not disruptive and did not impinge upon the rights of others. In these circumstances, their conduct was within the protection of the Free Speech Clause of the First Amendment and the Due Process Clause of the Fourteenth. (See appnices A and B)

"2. First Amendment rights are available to teachers and students, subject to application in light of the special characteristics of the school environment.

"3. A prohibition against expression of opinion, without any evidence that the rule is necesary to avoid substantial interference with the school discipline of the rights of others, is not permissible under the First and Fourteenth Amendments." 6

In layman's terms, there can be no rule made in the schools that constricts a students freedom, no matter what school, no matter what level of education, if the rule designer and maker cannot justify that regulation on the criteria of whether or not the act being limited will cause "substantial interference" with the normal course of scholastic activities. If he cannot establish that the act will cause this interference than he cannot establish the rule.

Now, with this clarification, the problem of the proverbial "grey area" becomes quite a bit clearer. The interference with normal school functions is vague, and difficult to define. It therefore lends itself to that age old problem of multiple interpretation, and the difficulty of enforcement becomes a real problem. It is perhaps due to these problems that the Justices

were so descriptive in their explanations of their opinions.

For this specific case Mr. Justice Fortas delivered the opinion of the Court. He was very graphic in his analysis of the outcome, and the reasons why the Court had decided to side with the petitioners on what could have been just another obscure hearing, but, because of its outcome, has been the single most influential case on the topic of education since desegregation.

In beginning his comments he reviews the happenings that led to the suspension of the three students. A meeting was held at the home of one of the parents of one of the students involved. At this meeting a decision was made that all those present would participate in a fast, accompanied by the wearing of black armbands, in protest of the conflict in Vietnam. This fast was to last from 16 December to New Year's Eve.

The principals of the Des Miones schools found out about this plan, and to avoid so called "outbursts" in the schools they got together and decided to make a rule against wearing armbands: The wearers would be asked to remove the armbands, and refusers would be suspended. This decision was made on 14 December, and was anounced to the students bodies. The children refered to as petitioners were suspended when they refused to remove their armbands.

The District Court heard the case and upheld the constitutionality of the school authorities. When appealed to the District Court of Appeals the original ruling was upheld again, mainly because the court was equally devided and, therefore, without opinion. The Supreme Court accepted the case, or granted certiorari.

Now, excerpts from the text of the official Opinion of

the Supreme Court of the land, with added notes for the maintenance of continuity:

> "As we shall discuss, the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment.
>
> "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[7]

In relating what the teacher's, and the school's responsibilities were he quoted Mr. Justice Jackson, also of the Supreme Court, from another case:

> "That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes."[8]

Continuing with his train of reason, he recounted another previous case and hearing of somewhat applicable outcome. He draws from this comparison what becomes perhaps the greatests argument in favor of his stand, and in favor of our current Supreme Court trends:

> "The District Court concluded that the action of the school authorities was reasonable because it was based upon their fears of a disturbance from the wearing of the armbands. But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right of freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, tha deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk, and our history says that it is this sort of hazardous freedom--this kind of openness--that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society."[9]

His next source of evidence is previous unpunished, but

similar experiences in the school systems.

> "The records show that students in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of Nazism. The order prohibiting the wearing of armbands did not extend to these. Instead, a particular symbol--black armbands worn to exhibit oppisition to this Nation's involvement in Vietnam--was singled out for prohibition."
>
> "In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in schools as well as out of schools are 'persons' under our Constitution. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved." 10

Then, to make it clear that there were several Constitutionality violations involved, he reminded the reader of what the official school board report had given as part of its explanation of the happenings that led to the suspensions:

> "After the principals' meeting, the director of secondary education and the principal of the high school informed the student that the principals were opposed (to the protest). They reported that 'we felt it was a very friendly conversation, although we did not feel that we had convinced the student that our decision was a just one.'" 11

Mr. Justice Fortas finally wrapped up his argument with a very important statement, one that is very convincing as a finale.

> "Under our Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact. Freedom of expression would not ruly exist if the right could be exercised only in an area that the benevolent government has provided as a safe haven for crackpots." 12

In summary, the Justice bases his arguments on the availability of personal freedoms from the surpressions of a "totalitarian" government. He stresses the needs all Americans have to be considered and treated as equal human beings regardless of age. He sees the school as the institution responsible for educating

American youth not only in book learning, but also in the basic elements of American democracy and justice--the Constitution. He feels that one cannot teach freedom and then deny it and call himself true.

Mr. Justice Black responded to the decision of the Court with a rather lengthy rebuttal. Dissenting opinions have no effect on the decided outcomes of the court; they only explain the reasons why the dissenter feels the decision was wrongly made. This Justice was very illustrative and logical in his explanation. A few comments will be added, but the general text is clear in its points of inflection:

> "The Court's holding in this case ushers in what I deem to be an entirely new era in which the power to control pupils by elected 'officials of state supported public schools. . .' in the United States is in ultimate effect transfered to the Supreme Court."[13]

Does the Court have the right to intercede in local or state affairs? Is the Justice's point well taken? He explains his thesis statement, and his support is more than worthy of our attention:

> "Ordered to refrain from wearing the armbands in the school by the elected school officials and the teachers vested with the state authority to do so, apparently only seven out of the school system's 18,000 pupils deliberately disobeyed the order."[14]

Four of these seven were from the Tinker family. Obviously, at least to the Justice, this means that there was really no complaint on the part of the vast, overwhelming majority of the students and their parents. The rest of the pupils were willing to accept the regulation, whether unconstitutional or not. And so, Justice Black continues:

> ". . .the Court arrogates itself, rather than to the State's elected officials charged with running

the schools, the decision as to which school disciplinary regulations are 'reasonable.'"

". . .the crucial remaining questions are whether students and teachers may use the schools at their whim as a platform for the exercise of free speech--'symbolic' or 'pure'--and whether the courts will allocate to themselves the function of deciding how the pupils' school day will be spent."[15]

Now we come to perhaps the most interesting part of the rebuttal. The Justice brings to light information that the opinion of the Court never made reference to, and this new evidence, new to us, sheds a rather different light on the topic of the semantics of the entire decision: "substantial interference." Was there any substantial disturbing effect as a result of the seven rebellious students?

"While the absence of obscene remarks or boisterous and loud disorder perhaps justifies the Court's statement that the few armband students did not actually 'disrupt' the classroom, I think the record overwhelmingly shows that the armbands did exactly what the school officials and principals foresaw they would, that is, took the students' minds off their classwork and diverted them to thoughts about the highly emotional subject of the Vietnam war."[16]

As to whether or not the issue of Freedon of Speech is solved by simply saying that it is a Constitutional right, and therefore should be respected in all situations for all people, is a topic that the Justice went into in some detail. He comments especially on the teacher/student relationship, and the role that this relationship plays in the educational process. If this role is disturbed too radically, too quickly, serious situations could result, the repercussions of which could be most devastating for the students that the changes were made to theoretically favor. The following quotes are an education in sound reasoning:

"I deny, therefore, that it has been the

'unmistakable holding of this Court for almost 50 years' that 'students' and 'teachers' take with them into the 'schoolhouse gate' constitutional rights to 'freedom of speech or expression.'" [17]

"The truth is that a teacher of kindergarten, grammar school, or high school pupils no more carries into a school with him a complete right to freedom of speech and expression than an anti-Catholic or anti-Semite carries with him a complete freedom of speech and religion into a Catholic church or Jewish synagogue. Nor does a person carry with him into the United States Senate or House, or into the Supreme Court, or any other court, a complete constitutional right to go into those places contrary to their rules and speak his mind on any subject he pleases. It is a myth to say that any person has a constitutional right to say whatever he pleases, where he pleases, and when he pleases. Our Court has decided exactly the opposite (in this case)." [18]

"In my view, teachers in state-controlled public schools are hired to teach there. . .certainly a teacher is not paid to go into school and teach subjects the State does not hire him to teach as a part of its selected curriculum. Nor are public school students sent to the schools at public expense to broadcast political or any other views to educate and inform the public." [19]

In summary, Mr. Justice Black concludes:

"This case, therefore, wholly without constitutional reasons in my judgement, subjects all public in the country to the whims and caprices of the loudest-mouthed, but maybe not the brightest, students. I, for one, am not fully persuaded that schools pupils are wise enough, even with the Court's expert help from Washington, to run the 23,390 public schools systems in our 50 States. I wish, therefore, wholly to disclaim any purpose on my part to hold that the Federal Constitution compels the teachers, parents, and elected school officials to surrender control of the American public school system to the public school student. I dissent." [20]

Another dissenting Justice, Mr, Justice Harlan, added a brief comment to those made by his counterpart dissenter. He theorized a better solution to the problem:

". . .I would, in cases like this, cast upon the complaining the burden of showing that a particular school measure was motivated by other than legitimate school concerns." [21]

The dissenters, therefore, seem to argue that the decision

of the Court does not really result in increased constitutional rights, but rather it creates new, overwhelming problems of definition and semantics that the old ways overpassed. They believe that the opinion of the Court puts the educational professional on the chopping block, and gives the student more control than he could possibly be cognitively prepared to asume. They argue that where there used to be some problem with abuse of rights, now there is such a massive new grey area, and so much redefining to be done, that there will never be reachieved any great degree of student/teacher comprehensible, well-developed, well-defined relationship.

In treating and researching this topic of student rights in general one soon learns that Justice Black's prophecy of over reaction to what could have been "just another case" could be ranked with the self-fulfillers of our era. Education cannot ever be the same.

Chapter 4

FREEDOM of SPEECH and EXPRESSION

The discussion of TINKER brings to the logical order here followed, with "Freedom of Expression" as the next topic in sequence. It is a very complex subject indeed, and will require detailed analysis in order to provide the future teacher with an adequate base of knowledge on which to make the necessary decisions in this area. In order to properly discuss this material it will be devided into two subheadings. The first of these two headings will deal with the inalienable nature of the constitutionality of the right to this freedom. The second will treat specifically the use of the freedom in scholastic journalism.

Part A: The Implications of the First Amendment.

"Congress shall make no law . . . abridging the freedom of speech. . ." Thus reads the First Amendment. But, as has been the history of justice in our great nation in the past, especially in the light of racial injustices, this right, guaranteed to all, has been obscured by those who would control the minds of free agents, not always to their detriment. Such is the case in our nations educational systems, as a whole.

There have been, perhaps, more cases in the courts concerning this precious right than any other right included in this

treatise. Countless actions have been filed and heard on the State level, and even on the Federal level, as is the case with TINKER.

In treating this subject, and in preparing any reader for coping with its inherent problems, the majority of which involve semantics and rhetoric, there will be included evidences from several key-note, well-defined court cases on the matter in hopes that this will provide an adequate frame of reference for fostering a well developed understanding of the freedoms involved and the limitations legally imposed. These limitations are surprisingly restrictive in nature, and this is all the more reason to study well the topic. It is asked of the reader that he be patient with the redundant use of, and reference to, the TINKER decision, but due to its monumental effects on the system it is refered to quite often in the text of this paper.

Prior to TINKER schools, for the most part, held to rules that limited students' rights to be expressive on any contraversial or antiestablishmentary issues. Expressive implies not only the right to believe differently, a right that has been severly curtailed in the not-so-distant past, but also the right to publicly demonstrate this concern or disagreement, In the past these limits were rigidly defined and maintained, strict and constricting, to the point of unreasonableness. This was the atmosphere of student life.

Now we are dealing with a new society of youth. Their parent generation was the best educated yet, and this is in part the explanation for the new fixation on real freedoms. Liberal minds are the main cause of the new views on what the limits of freedom should be.

In the past, educators have escaped judgement using flimsey arguments as justification for maintaining their rules. Order, discipline, and respect were the education goals used as substantiation for the trends of rules, rules that often denied students their constitutional rights.

> "No longer can courts uphold restraints on student expression merely because such restraints bear <u>some</u> reasonable relation to "educational goals." The interest which must be balanced against free expression, by judges and schoolmen, is neither the inculcation of a particular moral or political viewpoint, nor the fostering of respect for authority in general, but, rather, the material disruption of school activities. The argument should no longer be over the question of whether the courts have any business meddling in the educational realm. . ."[22]

Thus, the courts have now established their protective role in the educational system. They have become involved in the tedious, scrupulous process of redefining and reevaluating the old norms of student conduct. The outcome of this process is the obvious--all Americans <u>are</u> equally endowed with those constitutional rights.

> "The approach taken (by the Court) is important to note, however, because it represents a position commonly taken by school officials and courts in these kinds of cases. That approach assumed that there was a certain class of student expression which <u>per se</u> justified school authorities in taking disciplinary action--e.g., speech on school grounds which amounts to immediate advocacy of, and incitement to, school administrative procedures--and that in such cases it was unnecessary for school officials or the courts to make a factual inquiry into the question of whether or not it was reasonable to assume that the activity would result in material disruption. This approach is wrong. A student's First Amendment right to freely express contraversial viewpoints can be restricted only if substantial disruption in fact occurs or can be reasonably forecasted."[23]

This again makes visible the semantics emerging from the Supreme Court's decision. "Substantial disruption" is the deciding factor now, and it is not well defined at all. If this

condition cannot be established than there is no case for the administrative side, and the student cannot be surpressed.

> "To the extent that the TINKER test protects student expression in the absence of material disruptions in school activities, a significant area of protected student expression has been carved out. Although Justice Fortas was careful to point out that TINKER was not concerned with "aggressive, disruptive, or even group demonstrations," the opinion taken as a whole lends strong support to the position that neither the substance nor the means of student expression can, standing alone, constitute grounds for disciplinary action. (The Supreme Court) has made it clear that high school students have the right to speak out on contraversial issues, to criticize school policies and personnel, to distribute literature on school premises, to publish newspapers free from official censorship--all subject, of course, to the interest of the school in maintaining order and to rules and regulations reasonably calculated to maintain order." [24]

The criteria for stopping a student's disruptive influence becomesconstantly more restrictive. Not only that, but now the courts are exerting a new force, not before felt, in influencing school board behavior, often not supporting old accepted norms.

> "The traditional reluctance of the courts to interfere with the judgement of professional educators in matters of public school policy is now being eroded."[25]

So, where old rules read very conservatively and restrictively, now we see a new trend emerging from the system. Maintaining order in the classroom, with minimal restrictions on the student's right to vocalize personal opinions, seems to be hard to define, and will most probably prove even harder to enforce. Nonetheless, the rulings are solidly based on the Constitution, and the decisions of the Supreme Court are tending to, and will undoubtedly continue to sway in that direction of liberalness. Students are human beings, and are to be treated as such.

Another author has entertained the other side of the

idea, that is, the students' right not only to speak his feelings, but also to hear the feelings of the other people in his society, be they in favor of, or against the establishment, be they the ideas of, or contrary to the school officials. This new light brings one to the second portion of this chapter, where freedom to publish and express in writing are explored.

Part B: The Freedom to Publish.

To begin our discussion of this student right an outdated example of rules contrary to the right to publish is cited:

> "1. Personal opinions put in writing must be signed by someone in position of authority, and these connot interfere with, or disrupt, the normal classroom activities.
> "2. Any material writien by, and distributed by, a student, will make him directly accoutable for all its content, and for any action resulting from its being read.
> "3. Libel, obscenity, and personal attacks are prohibited from all publications."[26]

Further examination of these rules will enlighten us fantastically as to why they fall so easily to court criticism of late. Note the vagueness of the first two rules, where the person in "position of authority" is not named nor is his position titled. And, what does it mean to be held "accountable" for the effects of what one writes.

But, the best example of the ultimate in nebulousness comes with the third rule: What is the definition of "libel, obscenity, and personal attacks?" These words leave enough to the interpretation of the enforcer so as to allow him to censor whatever he or she might please.

In one high school students were expelled for printing and distributing literature containing "inappropriate statements about school staff members."[27] So read the 1968 ruling in a high

school in the midwest. When the case was reviewed in 1970 the decision took a dive, and was reversed, for obvious reasons.

The reasons for the reversal are simple: The kids were being punished for something that was not legally a crime. The accusations and jeerings against the staff members were not of a serious enough nature to be considered libellous, or defamatory to character, nor did the court consider that any student, as will be cited below, could produce literature sophisticated enough, at the high school level, to legally constitute libel or defamation of character. The comments made by the students were simply "inappropriate." Once again, the school was responsible for limiting students to the extent of denying them their constitutional rights--hence, the denial.

A more recent author, writing for the National Educational Administration, outlines the basic constitutional rights due each student with regard to freedom of press and publication:

"Censorship:

> "Even if a school pays for a student newspaper, it may not censor its contents it the newspaper has in the past been a forum for the expression of student views unless it can be proven that the paper will cause material and substantial disruption. School officials may not prevent the publication of an article because it criticises school policies, or or officials, or faculty, or is too contraversial.
>
> "The rule once again is whether school officials can produce concrete evidence that a given article is likely 'materially and substantially' to disrupt the school. It should be stressed that such evidence is not easy to produce. The standard is very strict and, just as in non-school situations, it is very rare that the extreme remedy of censorship is justified.

"Libel:

> "For the most part, this is not legally possible in the schools. The sophistication is simply not present. Therefore, this is a very unjustifiable accusation, for the majority of cases.

"Obscenity:

> "If a specific age group, involved in reading the

published material, could legally obtain the same quality of literature on the streets, or outside the school, then the publication cannot be censored. If literature of the same nature and detail were prohibited children of the youngest age group involved in the reading of the publication then the official would be justified in censoring the newspaper. This criteria includes obscene words and suggestive phrases, as well.

"Prior Restraint:

(This is the legal term meaning holding back from publication an article, or a paper, in this case, because of preenvisioned illeffects found before the paper was published. This is illegal. No publication can be withheld from publication prior to distribution.)

"In one court case a court held that a student publication containing an article saying that the dean had a 'sick mind' could not be restrained. The court found the remark 'distasteful and disrespectful' but held it did not justify surpression."[28]

From yet another source we gain insight into the distribution rights and processes:

"In 1972 (the Supreme Court) settled the question as to whether authorities can control the time and place of student publications. This control is necesary for the school to maintain the proper educational atmosphere. As stated in Stanley v. Northeast Independent School District, the school 'is to prevent disruption and not stifle expression.'

". . . Sullivan v. Houston Independent School District said that if those that received the publication were to act in an inappropraite manner it is they, not the writers of the publications, who should be disciplined.

"Eisner v. Stanford Board of Education (inumerated) it would be wise for all the board to consider and specify the areas of school property where it would be appropriate to distribute approved material.

"For example, a ban on the distribution of literature during a fire drill would be upheld. However, a regulation against any distribution while classes are in progress is too broad, and not justifiable."[29]

Several conclusions can be drawn from these comments. For one, the blame for innapropriate actions as a result of an article published in a school newspaper lies with the author of the action, not the article. Also, boards of education should be very specific and detailed when assigning school properties and areas where

distribution of materials approved by administration may be carried out, so as to avoid interference with school operation.

TINKER could not possibly be left out of this chapter. Within this cases written outcome are found some of the most profound of all outlooks on education, its purpose and philosophy. On the matter of the topics at hand, the Supreme Court, in TINKER, said the following:

> "In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved." 30

Students are indeed free agents, within legal limitations. Teachers cannot constrict thier minds, nor the creations of their minds, for the most part. Freedom of expression transcends nearly all other rights discussed in this text, and it is the most basic of all human rights, engulfing nearly the entire Bill of Rights, by definition alone. Students must be respected, and the way to avoid their evil speaking of oneself is to teach and act accordingly.

For the conservative reader, who may have been disillussioned by the topic of this chapter, there is still hope friend. Nothing is absolute, and freedom of expression is no exception. There are numberless questions, and much too few answers in this area, but there is still an area of teacher freedom and input involved also. There is, recall, no absolute freedom:

> "The United States Constitution does not establish an absolute right to free expression of ideas, though some might disagree. The constitutional right to free exercise of speech, press, assembly, and religion may be infringed by the state if there are compelling reasons to do so. The compelling for the state infringement we deal with is obvious. The interest of the state in maintaining an effective and efficient school system is of paramount importance. That which so interferes or hinders the state in providing the best education possible for its people, must be eliminated

> or circumscribed as needed. This is true even when that which is condemned is the exercise of a constitutionally protected right."[31]

Students <u>are</u> real people, and they deserve the same consideration for their rights as adults do. This consideration is mandatory, or serious repercussions may result unnecesarily. Ignorance to this law is no excuse, either.

Chapter 5

DUE PROCESS

Another of what have been deemed the more important of the universal rights in the Constitution is the right entitled Due Process. Put into laymans' terms it means simply that all people are granted the right to a fair trial, and all preliminaries necesary. This privilege is guaranteed all Americans in the Fourteenth Amendment (See appendix B):

> "No State shall make or enforce a law which shall abridge the privileges or imunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."[32]

This right was denied students in many ways, shapes, and forms in the past. Students were suspended without hearings or opportunity to defend themselves, and very often without even knowing the charges against them. Often, when expulsions were unlawful, for one reason or another, pupils were given interminable suspensions, or successive suspensions, in order to avoid the legal necesities involved. This situation is rapidly being changed.

In 1975 the Supreme Court heard a case involving such injustices and unfair practices.

> "The prospect of imposing elaborate hearing requirements in every suspension case is viewed with great concern, and many school authorities may well prefer the untrammeled power to act unilaterally, unhampered by rules about notice and hearing. But it

> would be a strange disciplinary system in an educational institution if no communication was sought by the disciplinarian with the student in an effort to inform him of his defalcation and to let him tell his side of the story in order to make sure that an injustice is not done. Fairness can rarely be obtained by secret, one-sided determination of the facts decisive of rights. . . Secrecy is not congenial to truthseeking, and self-righteousness gives too slender assurance of righteousness. No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and opportunity to meet it."[33]

An actual hearing procedure was offered for adoption, and upheld, in Olympia, Washington, in 1970:[34]

> Procedural Rights and Regulations
>
> --Right to a hearing on request of the student or the student's parent.
>
> --Procedural guidelines:
>
> a. Written notice of charges to student and parent.
> b. Parent present at hearing.
> c. Legal counsel at hearing if desired by student.
> d. The student must be allowed ample time to give his side of the event, and he can use witnesses and present evidence in his defense if he so chooses.
> e. The student will be allowed to examine all evidence against him, and to question all witnesses.
> f. An impartial hearing authority must be provided.
> g. A record must be kept of all hearing proceedings.
> h. The authority at the hearing must present his verdict and decision with in a reasonable period of time.
> i. His findings and decision must be published for the student and his parents.
> j. Both the student and the parent must be made aware of their right to appeal the decision.

Although in parts of this list one can easily locate very evident weaknesses and vaguenesses, this is a step in the right direction. The student has been guaranteed all his rights as a legal citizen of the country, and he should at least have the benefit of a good, just hearing before he is punished.

However, there is one great shortcoming involved in this list: There is no provision made for the dealing with the technical expulsion where authorities simply transfer the student to another school to get rid of him. This illegal custom, called "school transfer expulsions," is dealt with in another hearing:

> "Expulsions have been replaced by inter-school transfers. But, there must still be a hearing anytime a student is denied, for disciplinary reasons, access to a school he otherwise has a right to attend." 35

Another problem alluded to in the beginning of this chapter is that of "long term v. short term" suspensions. The wording may make it all sound rather insignificant, but there is logical difference in the degree of hearing and due process procedures in order for the degree of punishment involved. If one is to be suspended for a day his hearing rights would be less than if he were facing the possibility of a months suspension.

This rhetorical problem is even more obstructive when clever administrators learn little tricks on how to completely avoid hearing procedures altogether by simply adding successive small, or short suspensions onto eachother. Perhaps the appraisals of another author would clarify the topic:

> "The greatest problem is the dilemma created by the following contraversies:
> 1. The need for a hearing prior to the administering of a long term suspension.
> 2. The need for an immediately applicable disciplinary tool for administrators.
> 3. The use of successive short term, hearing-less suspensions to avoid hearings on long term decisions." 36

Obviously the last stage requires some restrictive measures for the purpose of checking its illegal usage. But, on the whole, the problems with this student right, as with the

majority of those discussed in this paper, is one of semantics. Terms unadequately defined, or not defined at all, lead to the grey areas that cause unrest and conflict. Such is the situation with phrases such as, "immediately applicable," "Long term v. short term suspensions," and similar phrasology with ambiguous interpretations. The pity of it all is that these clarifications come hard, and it is improbable that they will be changed before someone has payed the price of extensive and expensive court actions.

One last point should be made, and it pertains to the age old excuse of ignorance somehow equalling innocence: "Ignorance to constitutional rights is not justifiable for any superintendent."[37] We are dealing with real people in schools, and that they deserve their rights to equality is paramount. These students are literally our legal peers. Denial of their rights is a serious crime, and is punishable by fining even in the case of teachers.

> "With respect to the appropriate remedy for students denied constitutional rights, the Supreme Court in Wood v. Strickland, 1975, held that school officials who discipline students unfairly cannot defend themselves against civil right suits by claiming ignorance of pupils' basic constitutional rights. By a 5-4 vote, the Court further ruled that a school board member may be personally liable for damages 'if he knew or reasonably should have known that the action he took within his sphere of official responsibility would violate the constitutional rights of the student affected, or if he took the action with the malicious intention to cause a deprivation of constitutional rights or other injury to the student.'"[38]

We, as teachers, and future teachers, must safeguard ourselves against this threat of suit and liability. The only real protection is information, which is obtainable only through education. We must bring our minds up to date on the latest verdicts and decisions of the courts as to the rights of students

with respect to due process. As adults, we would be very disgruntled indeed if our rights were denied us, yet many of our peers think nothing of depriving a youth of his basic constitutional freedoms. Many of these peers are paying a great ransom for their arrogance. These students must be treated as equals in the light of their true free agencies and rights guaranteed.

Chapter 6

"IN LOCO PARENTIS"

The rights of student equality in various different terms and view points have been discussed in this treatise so far. It has been reflected that there have been major recent breakthroughs in the area of student freedoms, and that these were all closely related to the basic right of freedom of expression, in one sense or another. The subject of "in loco parentis" is another of these basic human rights that has been denied proper concentration or resolution for too long, and this, as with the other rights heretofore mentioned, has undergone a metamorphosis worthy of great attention.

By definition, "in loco parentis" means "in place of parents."[39] This doctrine was the main foundation for the majority of the quickly failing rules and regulations dealing with the apportionment of freedom to students. It gives, or gave, freedom to the teacher and school administration to act for and in behalf of the parents in the school atmosphere. This included punishment, disciplining, educating, and even religious orientation in some institutions. This is all quickly being uprooted, and especially in the public schools.

This totalitarianism, therefore, has not only been threatened, but perhaps terminated. In the TINKER decision the Supreme Court ruled that the school has no power to maintain laws that threaten a student's constitutional rights. In layman's terms this

simply means that the school cannot accept the responsibility to make rules, or enforce rules, that limit the constitutional freedom of a pupil as can the parent. The tests to which school regulations are put are far more rigorous than those designed for parents. The school is constitutionally limited in a direction opposite to that of "in loco parentis."

Corporal punishment, freedom of expression, and due process are only a few of the newly emerging, newly substantiated student rights. These privileges have always existed in the supreme law of our land, but their enforcement has remained dormant for years uncounted. The school is loosing a previously usurped power over students, and that has had a definite effect on the system in question.

> "Where previously high school students had virtually no legal alternatives when faced with the all-inclusive authority of the school system, they now have some breathing room. The traditional in loco parentis view of the schools seems to be slowly giving way, in the courts at least, to a view of education premised on the fact that 'neither students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gates.' (TINKER)."[40]

Schools and their administrators are no longer "parents" for eight hours a day, legally. The New York State Department of Education ruled that "the school and all its officers and employees stand 'in loco parentis' only for the purpose of educating the child."[41] This specifies that the parental responsibilities of disciplining, etc, are lost for the school, except within the limits directly related to education, as is the case in "material disruption," a term before refered to. The parent now informs the school officials what measures can be taken with the child in question, and due process is observed stictly in these matters. Much of the school's loss of power stems from the ceding of this power.

Chapter 7

HAIR and DRESS STANDARDS

Although the United States Supreme Court has never made an over powering, all-encompassing ruling on the subject of the constitutionality of dress standards, per se, they have declared it to be a right of the individual, in interesting terms:

> "Although there is disagreement over the proper analytical framework, there can be little doubt that the Constitution protects the freedom to determine one's own hair style and otherwise govern one's personal appearance." 42

In another later case the same Justices enlarged on this position by saying: "We conclude that within the commodious concept of liberty, embracing freedoms great and small, is the right to wear one's hair as he wishes." 43

These quotes rather clearly state, or imply rather explicitly, that the right to wear one's hair, and to dress as one sees fit, are basic rights guaranteed in the supreme law of the land. But, owing to the fact that there has been no actual "decision of the court" on this topic, the states are individually responsible for maintaining rules, or abolishing same, with respect to dress standards. They have the power, within their jurisdictions, to either make the rulings themselves, or to delegate this power to the individual school districts. Because of the greyness of the area in Federal law only half of the states have changed or abolished their hair and dress regulations: 44

"Dress Codes: Long hair rules declared unconstitutional.

Arkansas	New Hampshire
Connecticut	New Jersey
Delaware	New York
Idaho	North Dakota
Illinois	Pennsylvania
Indiana	Rhode Island
Iowa	South Carolina
Maine	South Dakota
Massachusetts	Vermont
Minnesota	Virginia
Missouri	West Virginia
Nebraska	Wisconsin

"States where still permissible under law, although not required, for districts to maintain regulations limiting students' hair length.

Alabama	Mississippi
Alaska	Montana
Arizona	Nevada
California	New Mexico
Colorado	Ohio
Florida	Oklahoma
Georgia	Oregon
Hawaii	Tennessee
Kansas	Texas
Kentucky	Utah
Louisiana	Washington
Michigan	Wyoming"

It is immediately obvious which states have accepted these stands due to regional trends, e.g. southern states maintain conservativism, while the majority of the original thirteen colonies tend towards the progressivist view. Perhaps the greatest shock in the list is that California, usually acquainted with progressivism and liberalism, is on the conservative end of this particular spectrum.

All interpretations aside, this list places a great many states on very questionable, shakey ground. The Supreme Court has dealt with many cases on this topic, and although they have not made any grand, all-encompassing decision on the matter, they have very predictably swayed toward the "unconstitutional" end of the spectrum. But, sensing this opportunity to remain separate and

distinct entities of government, half of the states have yet to change their rules, and so the Supreme Court will continue to face the pressure of making and publishing a decision on the matter.

One good example of this grey area concept is a case taken before the New York Supreme Court involving several girls that had worn slacks to school, on a rather ugly day for weather, against school policy. The girls were all suspended. The court reversed this suspension, and assigned questionable criteria to the matter created an even greater confussion on the topic: The rule had preciously read that no slacks could be worn to school without express written permission of the principal, or equivalent permission. The court ruled that the "school could not uphold such a rule,"[45] but they did not rule against, or order abolished as a whole, the dress code rule. The girls were simply reinstated in the school unpunished and justified.

Another interesting case, the first such case involving a federal appellate court, or Federal Court of Appeals, dealt with an intriguing rule:

> ". . .the Court of Appeals, Seventh Circuit, invalidated the following regulation:
>
> > 'Hair should be washed, combed and worn so it does not hang below the collar line in the back, over the ears on the side and must be above the eyebrows. Boys should be clean shaven; long sideburns are out.'
>
> "The school board had argued during the district court trial that the school's regulation was valid and if that court allowed the student to disregard the school's regulation it would cause a major disruption on the part of the students."[46]

The school maintained this feeling of the need to subjugate the students on the premise that learning respect is part of the educational system's greatest responsibilities, and

should remain as such. The court ignored this plea, and they proceeded to discredit the entire argument of the case on the basis of a literal lack of evidence:

> "With respect to the 'distraction' factor, the showing in this record consists of expressions of opinion by several educational administrators that the abnormal appearance of one student distracts the others. There is no direct testimony of the educational administrators, and it appears that there is an absense of factual data which might provide amplification.
>
> "With respect to the 'comparative performance' factor, this record is equally barren. . . No hard facts addused even from a limited sample to demonstrate that the academic performance of male students with long hair is inferior to that of male students with short hair, or that the former are less active or less effective in extra-curricular activities."[47]

The court suggests that there is no logical justification for the hair regulation, and sights, not only a lack of evidence on the behavioral angle, but also on the academic angle--the schools exist to educate, and the court questions whether this rule makes this job more effective.

The outcome: The rule "rudely invodes a highly protected freedom," and "The right to wear one's hair at any length or in any desired manner is an ingredient of personal freedom protected by the United States Constitution."[48]

Once again, the courts have upheld that the schools are invading the realm of constitutionality, and yet half of the country still maintains anti-hair regulations, or condones the enforcement thereof.

One important point to make here is that, as with all Supreme Court decisions, there are always accepted exceptions to all rulings. With the hearings on hair length and styling the court decided to allow for some latitude, as was evidently necesary. The are obviously certain situationa in which long, or unkempt hair

is not only unpleasant, but also uncalled for and unsafe. Shop classes, cooking courses, and even chemistry courses are all potentially dangerous situations for long hair. For this reason, the court ramified its decision to include any such special cases, where obvious control measures must be maintained: "Dress and appearance must present no health or safety problems or cause disruption."[49]

Earlier, in the same year of that decision, another similar rule was enacted in Seattle, Washington. Much more complete in its text and more effectively phrased, it contained this phrase:

> "Students' appearance should be neat and clean. Dress and Appearance which cause disruption of the educational process or present health or safety problems shall not be permitted; otherwise, dress and appearance are the responsibility of parents."[50]

It should be noted that hair and dress codes have been passed onto the home, where they belong, and the school and district have relinquished a long-held power to the anti-in loco parentis pressure. But, also of note is the reoccurence of the phrase "Health or safety problems," which indicates a new dependence on the semantics of the court's decision.

This trivial phrase, as is true for the majority of the scrutinizing phrasology of the Court, has become esential to all who would justify their anti-hair rulings for future dress codes.

> ". . .the same legal arguments are applicable to dress codes. Restrictions on dress should be limited to the same justification as restrictions on the other constitutionally protected rights, to wit, they must be designed to prevent substantial disruption in school sctivities. The New York State Commissioner of Education, for example, has ruled that school authorities can only "prohibit the wearing of any kind of clothing which causes a disturbance in the classroom, endangers the student wearing the same, or is so distractive as to interfere with the learning and teaching process."[51]

If dress or hair styles, therefore, do not interfere with the learning and teaching process, or with the operation of the institution, or even with the safety of the individual, than the school can constitutionally pass no rule against those styles. There is no legal basis for it, and it connot survive the test of the courts.

For those planning to beccme teachers and/or administrators, this is the rule to remember, and the main case to keep in mind when deciding on this issue so touchy and sensative today:

> "The more a rule becomes infringing on rights, the more detailed and close the scrutinization, and the more justification required. Infringement will not be allowed unless the school cán prove the rule is esential to 'aviod substantial and material interference with school work or discipline.'"52

As one can easily discern, TINKER is still the rule to abide by, and the landmark to refer to when lost in the rhetoric of student rights and regulations.

Chapter 8

LAW ENFORCEMENT

This chapter will deal briefly with an area little defined and little respected. The problem of dealing with public servants on school grounds demands definition, but the possibilities vary greatly with states and school districts.

There have been, however, some places in the country where accurate definitions have been formulated, and these are general guidelines that can most probably be used safely anywhere in the country. In a treatise examining the Bill of Rights' effects on students' rights in this area, the State of Washington published the following:[53]

"Search and Seizure:

--General searches of the property may be conducted at any time.
--Searches of any areas assigned to a student, such as lockers, and the like, may be conducted only in search for a specific item, and only in the presence of the student.
--Any illegal or threatening items may be seized immediately.
--Items used to disrupt classroom or school operation may be temporarily seized, and later returned.

"Criminal Activities:

The following activities are among those defined as criminal under the laws of the State of Washington, and the City of Seattle:
--Sale, use, or posession of alcoholic beverages.
--Sale, use, or posession of illegal drugs.

The school official in charge will immediately remove from contact with other students anyone under the influence of alcohol or drugs and thereupon shall contact the parent or guardian.

"Off-Campus Events:

Students at school-sponsored, off-campus events shall be governed by school district rules and regulations and are subject to the authority of school district officials. Failure to obey the rules and regulations and/or failure to obey the lawful instructions of school district officials shall result in loss of eligibility to attend school-sponsored, off-campus events."

Another good source of seizure regulations illustrations is the results of a Court of Appeals ruling in New York State:

> "Quite material would be observation of the student to be searched over a sufficient period of time, whether hours, days, or longer, which suggests, at least, more than an equivocal suspicion that he (or she) is engaged in dangerous activities."[54]

Another problem, involving legal rights of the students in connection with law enforcement, is that of police questioning. One source has provided us with this guidance:

> ". . .police authorities have no power to interview children in the school building or to use school facilities in connection with police department work, and the board has no right to make children available for such purposes. Police who wish to speak with a student must take the matter up directly with the student's parents."[55]

Even when the child's innocence is not being questioned, or when he is only being asked to speak as a bystander or witness, these rules of procedure must be carefully followed and observed to avoid further legal problems and prosecutions.

Chapter 9

DISCRIMINATION

It is necesary to reiterate at this point the purpose of this paper: To briefly outline the rights of students with regard to the various different controversial areas of student/teacher and student/administrational interaction. This is the basic purpose of this chapter, also, that is, to outline the rights of students in the area of discriminatory practices.

These discriminatory practices fit neatly into two basic cat gories, each of which will be discussed separately, and in varying detail. The two gemeral areas are sex discrimination and racial discrimination.

Part A: Sex Discrimination.

The most recent and monumental breakthrough in solving the unnecesary problems related to sexual discrimination and preferential treatment due to sex is well known to all teachers, as it should be: Title IX. The United States Commission on Civil Rights published, in 1974, a very good summary of what this amendment to the Constitutional text consists of:

> "These amendments prohibit discrimination on the basis of sex by educational institutions receiving Federal funds. This prohibition covers educational programs, athletics, employment, admissions and financial aid, and all other programs and services of the institution. Certain types of institutions, however, are exempt from the provisions of the amendments only with regard to admissions.

> "Examples of discrimination forbidden by these amendments include: refusal of a co-educational institution to admit women to any academic program (engineering, animal husbandry, for example); refusal of a Board of Education to hire or promote qualified women as principals in the school system; or refusal of a college to allow women equal access to athletic programs and facilities (including playing fields, equipment, and instruction).
>
> ". . .HEW may conduct periodic compliance examinations. Where educational institutions are found to be discriminating on the basis of sex, and HEW finds that this cannot be corrected informally, it may terminate or refuse to grant funds to that institution."[56]

A similar explanation of the essence of this Title IX is found in the introduction to the section about it in the Code of Federal Regulations:

> ". . .title IX of the Education Amendments of 1972, as amended by Public Law . . .which is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such educational program is sponsored by an educational institution. . ."[57]

In brief, and without further interpretation, these say that there is no reason, or few exceptions, why all activities at an educational institution cannot be provided to both sexes. If for any reason they are not provided to both sexes, the Federal government reserves the right to discontinue the granting of educational funds to that institution. It all seems so simple.

It all seems so simple until we encounter that one situation that really separates the girls from the boys: Pregnancy.

In many schools this has become a very real problem. There are many schools that enforce rules barring pregnant girls from certain activities, some from all extra-curricular activities alltogether, and some from even attending school at all. These are, for the most part, very unconstitutional, and must be changed.

But, the problem complicates itself when these pregnant persons are found in high schools, and even in junior high schools.

These girls, often unmarried, are considered to be, and logically so, an immoral example to the other children. This is a powerful negative influence, and even some see it as grounds for expulsion. What does the law say to this situation?

Sexual promiscuity are banned from all campuses--that makes sense.. Some, employing the rhetoric of TINKER, say that these girls provide "substantial disruption" and thusly are eligible for suspension or expulsion. Several court cases have turned into battles on these counts, and illustrated below are a representative few of those on record. Note, as reading, the implications of immoral influence, as well as those of equality under the law.

> "The Perry case (a Supreme Court case) challenged a school policy which automatically barred pregnant girls and unwed mothers from school. The court ruled narrowly that the exclussion of unwed mothers without a hearing violated Due Process (see chapter 5). The opinion, however, made it 'manifestly clear that lack of moral character is certainly a reason for excluding a child from public education.' The court went on to concede that 'the fact that a girl has one child out of wedlock does not forever brand her as a scarlet woman undeserving of any chance of rehabilitation or the opportunity for future education.'
>
> "Even though the plaintiff in Perry may have eventually been reinstated, the approach taken by the court is too narrow. The possibility of an unwed mother 'morally contaminating' her fellow students cannot, absent of the fact of a verifiable disruption in school activities, serve as a justification for an expulsion from school. The brief also convincingly argues that the failure to excuse unwed fathers violates the Equal Protection clause.
>
> "The court had no problems with the policy of excluding pregnant girls. 'The purpose of excluding such girls,'it said, 'is practical and apparent.' In light of recent student rights decisions in other areas, however, such procedures may not seem as practical and apparent as they once did. They may well be unconstitutional.
>
> "School authorities not only have a legal obligation not to discriminate against pregnant girls by denying them their right to attend regular classes, they may also be obligated to provide special services to such students once it becomes unadvisable, for reasons

> of health, for them to attend ordinary sessions. Many jurisdictions have set up such programs."[58]

This concludes saying that not only are these girls being wringed in the general reactions towards them, suspensions and the like, but these schools may be greatly in their debt educationally, by not having provided, and not presently providing, special programs for the education for those that cannot attend the regular classroom sessions. This is a very interesting hypothesis.

Some schools and educational institutions do not even distinguish between pregnant girls and girls that are married, and they have strict regulations governing the education of married coeds. One such school board policy reads: "Any married student or parent shall be refused participation in extra-curricular activities."[59] This undeniably violates the 1st Amendment to the Constitution (see appendix A).

One female student pleased this constitutional violation after her rejection from all activities of an extra-curricular nature, and as could be hoped for, her school board's decision was reversed by the Court of Appeals:

> ". . .the distinction completely disregards the fact that, like scholastic activities, extra-curricular activities are funded by the state by means of its taking power as a significant aspect of the educational process." 60

So, due to the totality of Title IX, the girl was reinstated in the school, and so will others who will stand up for their inalienable right to an education. The change will be gradual, as all must have expected, and as it was and it is with the racial prejudices in our country, but it will happen, and the matamorphosis will complete its cycle of sure change if all concerned will exert sn extra bit of effort.

Part B: Racial discrimination:

It is with great apologies that this section is initiated. It will in no way be nearly as complete as previous sections and chapters have been. The reason is very simple: There have been great changes in the past, and historically so, but also voluminously so. To begin to comprehend the trends in racial discriminatory changes would take a paper twice again as long as the one in hand. Neither the time nor the resources have been made available for an undertaking such as that.

Let it therefore suffice that a brief commentary be included in place of such monstrous verbosities as would otherwise be required.

The first great breakthrough in Black education, which has been the spearhead for all other races' pleas for equality, was in 1954, with Brown v. Board of Education of Topeka. Here the Supreme Court decided that it was the fight and right of every child in the United States to have an equal opportunity to an equal education. This is one of the great milestones in the Civil Rights movement of today.

Perhaps the greatest method of judging the needs of education in for minorities in todays societies is not based on only one race or another, but rather on the socioeconomic standard involved. This seems to be the single most dominant determinant of the potential educational achievement levels of minorities in America today. Commenting on this, one author said:

> "There are those that say that the educational problems faced by black Americans today do not stem from racial considerations but are largely due to what sociologists call socioeconomic factors. To some extent, that may be true. Ther is, however, adequate evidence that race is an important determinant of socioeconomic status in America and that proportionately, more blacks

> than whites are concentrated toward the lower end of the nation's social and economic structure. As much as anything else, it is their blackness that makes it dificult for them to secure the tools neede for upward mobility. Education is generally recognized as one of the tools needed for this purpose."[61]

It is reiterated at this point that this paper is not a treatise on civil rights, nor is it an oratory on equality. It is simply designed to illustrate what are the basic constitutional rights of the everyday student. For this purpose the quote above was inserted, that is, to show that these people need, as do all Americans, the education guaranteed us all in the Constitution.

Therefore, let it be said simply, that it is the right of all persons in the United States,,legal residents and citizens, to have an educational opportunity of equal magnitude to their academic achievement. That is, no child can be barred from a school, any school, an the basis of his race, save a very few exceptions. This is the right most widely known, and most often heard in the courts. A teacher must never be found guilty of discrimination.

Chapter 10

CORPORAL PUNISHMENT and GRADES

Part A: Corporal Punishment.

There are several esential steps to remember when dealing with this issue. The first is that of Due Process, that is, the steps outlined in Chapter 5 must be strictly obeyed, and a hearing, at least on the first proposition of this form of discipline, is a must. Later, with the permission of the parent, "in loco parentis" may be granted, and the punishment may be used when the teacher, or administrator, sees fit.

This form of discipline should always be a last resort. Its purpose is to teach, not to cause bodily harm. Even when given permission, after proper due process has been observed, ir the child is harmed in any way the teacher is liable for that damage. Be conservative in the use of the power, if posessed.

The Supreme Court has never ruled against this practice on the whole, although it has ruled several times on specific cases of child abuse and corporal punishment.

Part B: Grades.

Grades and diplomas cannot be withheld from a student for any reason, or as part of any disciplinary action, that does not relate specifically to academics. Grades cannot be withheld, altered, or lowered for any non-academic reason or variable.

Chapter 11

CONCLUSSION:

CLASSROOM CONTROL

In depth discussion of the topic of student rights has offered solutions to common, and uncommon problems related to dealing with students in today's classrooms. But, the discussion has also left a void, illdefined up to this point, questioning where the rights of the student and the need for classroom control intersect. The legal phrases like "substantial disruption of school activities," and "material disruption" have yet to be satisfactorily defined, and so one is left wondering when it is appropriate to discipline a misbehaving student without putting one's career in jeopardy.

Interpreting the 1970 results of the findings of the Senate Subcommitee on Juvenile Delinquency, an administrator spoke to a convention of educational personnel:

> "Faced with the daily problems of control of behavior and increasing public criticism, school personnel tend to view the first priority as being the establishing and maintaining of order in the schools with the question of student rights being secondary in importance and certainly less pressing."[62]

He then produced the findings of the Senate Subcommitee above named:[63]

Survey of 110 schools by the Senate Subcommitee on Juvenile Delinquency: In-School Crimes

	1964	1968
Homocides	15	26
Forcible Rapes	51	81
Robberies	396	1508

Aggravated Assaults	475	680
Assaults on Teachers	25	1,801
Assaults on Students	1,601	4,267
Narcotics	73	854

The increase in the problem of student abuse of the school atmosphere is alarming, and the over emphasis of, or the over reaction to, student constitutional rights can, if it diverts our attention from the pressing problem of classroom control, destroy our educational system. Prisons are composed of people that had freedoms and abused them, and the school should not create, nor allow to be created, a situation where administrators will have to face the decision of producing a prison-like environment to curtail these illegal and inhuman activities. This is a pressing problem.

The questions are many and the answers are few, but they are there. The trick seems to be that the teacher must find a workable balance, and maintain that balance. When the situation dictates then freedoms must be removed: This is justice. But the purpose of this paper was to define when and where these removals of freedoms, or these denials of rights, can be constitutionally justified, and these times and places are very restrictive.

"There is no absolute freedom" for the student or the teacher. The old addage that "the teacher is always right" was never, and never will be correct. Know your limitations. Define them to yourself, and then define to your students theirs. This situation demands reciprocity, and therein lies the key to success.

Section II

AUXILIARY MATERIALS

Appendix A

The FIRST AMENDMENT to
the CONSTITUTION

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Appendix B

The FOURTEENTH AMENDMENT to

the CONSTITUTION *

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws.

2. Representatives shall be apportioned among the several States according to their population. . .

3. No person shall. . .hold any office, civil or military, . . .who shall have engaged in. . .rebellion.

4. The validity of the public debt of the United States . . .shall not be questioned. . .

5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

*An abridgement, containing all material pertinent to the text of this thesis.

FOOTNOTES

[1]Eve Cary, "What Every Teacher Should Know About Student Rights," National Education Association, Washington, D.C., 1974.

[2]Pete Francis, from a letter from the Joint Commitee on Education, Washington State Legislature, to the Governor of Washington State, Pete Francis being Chairman of said Commitee. 5 November, 1970

[3]From the proceedings of the Subcommitee on Student and Personnel Policies, State of Washington, November, 1970.

[4]Mr. Justice Jackson, Justice of the Supreme Court of the United States. Opinion delivered 1943, West Virginia Board of Education v. Barnette.

[5]Ibid.

[6]"Tinker et al., v. Des Moines Independant Community School District," 24 Feb, 1969, from: United States Reports, Cases Adjudged in the Supreme Court at October Term, 1968. pg. 503. Opinion of the Court: Mr. Justice Fortas.

[7]Ibid. pg. 505

[8]Ibid. pg. 507

[9]Ibid. pgs. 508-9

[10]Ibid. pgs. 510-11

[11]Ibid.

[12]Ibid. pg. 513

[13]Ibid. Dissenting Opinion, Mr. Justice Black, pg. 515

[14]Ibid. pg. 516

[15]Ibid. pg. 517

[16]Ibid. pg. 518

[17]Ibid. pg. 521

[18]Ibid.

[19]Ibid. pg. 522

[20]Ibid. pg. 525

[21]Ibid. Dissenting Opinion, Mr. Justice Harlan, pg. 526

[22]James A. Bansfield and Carolyn Peck, Harvard University, Cambridge, Massachusetts. Student Rights Litigation Materials, Center for Law and Education, 7 May, 1970. pg iv.

[23]Ibid. pg. v.

[24]Ibid.

[25]Ibid. pg. iv.

[26]"The Application of the Bill of Rights to Pupils in the Common Schools of the State of Washington: A Report to the Washington State Legislature by the Subcommitee on Student and Personnel Policies of the Joint Commitee on Education," Washington State Legislature, Olympia, Washington, 5 November, 1970. pg. 17-18

[27]James A. Bansfield and Carolyn Peck, Harvard University, Cambridge, Massachusetts. Student Rights Litigation Materials, Center for Law and Education, 7 May, 1970. pg.iv.

[28]Eve Cary, "What Every Teacher Should Know about Student Rights," National Education Association, Washington, D.C., 1974.

[29]Bob E. Riley and Jack V. Mattingly, Federal Court Cases: A Principal's Handbook on Teacher and Student Rights. East Texas School Study Council, Commerce, Texas. December, 1975.

[30]"Tinker et al. v. Des Moines Independant Community School District," 24 February, 1969, from: United States Reports, Cases Adjudged in the Supreme Court at October Term, 1968. Opinion of the Court: Mr, Justice Fortas. pg. 511.

[31]Bob E. Riley and Jack V. Mattingly, Federal Court Cases: A Principal's Handbook of Teacher and Student Rights. East Texas School Study Council, Commerce, Texas. December, 1975. pg. 54.

[32]From the text of the Fourteenth Amendment to the Constitution of the United States of America.

[33]"Goss v. Lopez," United States Supreme Court, 1975, as quoted from: Eve Cary, "What Every Teacher Should Know about Student Rights," National Education Association, Washington, D.C., 1974.

[34]"The Application of the Bill of Rights to Pupils in the Common Schools of the State of Washington: A Report to the Washington State Legislature by the Subcommitee on Student and Personnel Policies of the Joint Commitee on Education," Washington State Legislature, Olympia, Washington, 5 November, 1970. pgs. 19-20.

[35]Eve Cary, "What Every Teacher Should Know about Student Rights," National Education Association, Washington, D.C., 1974.

[36]Ibid.

[37]Ibid.

[38]Ibid.

[39]James A. Johnson, and others, The Foundations of American Education, third Edition, Allyn and Baker, Inc, Boston, ©1976. pg. 34

[40]James A. Bansfield and Carolyn Peck, Harvard University, Cambridge Massachusetts. Student Rights Litigation Materials, Center for Law and Education, 7 May, 1970, pg iv. Contains a quote from Tinker v. Des Moines Independant Community School District, Supreme Court of the United States, 24 February, 1969.

[41]Eve Cary, "What Every Teacher Should Know about Student Rights," National Education Association, Washington, D.C., 1974.

[42]James A. Bansfield and Carolyn Peck, Harvard University, Cambridge, Massachusetts. Student Rights Litigation Materials, Center for Law and Education, 7 May, 1970, pg v.

[43]Ibid. Quoting from Griffin v. Tatum, Supreme Court of the United States, 1969.

[44]Eve Cary, "What Every Teacher Should Know about Student Rights, "National Education Association, Washington, D.C., 1974.

[45]Bob E. Riley and Jack V. Mattingly, Federal Court Cases: A Principal's Handbook o'. Teacher and Student Rights. East Texas School Study Council, Commerce, Texas. December 1975, Quoting from: Scott v. Board of Education, Supreme Court of the United States, 1969.

[46]Ibid. pg. 54.

[47]Ibid.

[48]Ibid. pg. 55. Quoting the Court of Appeals, Seventh Circuit, Breen v. Kahi, 1969.

[49]"The Application of the Bill of Rights to Pupils in the Common Schools of the State of Washington: A Report to the Washington State Legislature by the Subcommitee on Student and Personnel Policies of the Joint Commitee on Education," Washington State Legislature, Olympia, Washington, 5 November, 1970. pg. 17

[50]Policies that Clarify Student Rights and Responsibilities. School Board Policy Development Kit., National School Board Association, Waterford, Connecticut, Education Policies Service, October, 1970.

[51]James A. Bansfield and Carolyn Peck, Harvard University, Cambridge, Massachusetts. Student Rights Litigation Materials, Center for Law and Education, 7 May, 1970, pg iv.

[52]Ian Templeton, "Student Rights and Responsibilities." Educational Management Series no.14. Sponsoring Agency: National Institution of Education (DHEW), Washington, D.C., February, 1973

53"The Application of the Bill of Rights to Pupils in the Common Schools of the State of Washington: A Report to the Washington State Legislature by the Subcommitee on Student and Personnel Policies of the Joint Commitee on Education," Washington Stae Legislature, Olympia, Washington, 5 November, 1970. pgs. 16-17.

[54]Bob E.Riley and Jack V. Mattingly, Federal Court Cases: A Principal's Handbook an Teacher and Student Rights. East Texas School Study Council, Commerce, Texas. December, 1975.

[55]Eve Cary, "What Every Teacher Should Know about Student Rights," National Education Association, Washington, D.C., 1974.

[56]United States Commission on Civil Rights, Clearing House Publication No. 46, 1974. pgs. 49-50.

[57]Code of Federal Regulations, Vol. 45, pg 86.2, Subtitle A: Department of Health, Education and Welfare. October, 1975.

[58]James A. Bansfield and Carolyn Peck, Harvard Univerity, Cambridge, Massachusetts. Student Rights Litigation Materials, Center for Law and Education, 7 May, 1970. pg.x.

[59]Ibid.

[60]Ibid. Quoting from Johnson v. Board of Education of Paulsboro, Supreme Court of the United States, 14 April, 1970.

[61]Alfredo Castañeda, Richard L. James, and Webster Robbins, The Educational Needs of Minority Groups. Professional Educators Publications, Inc., Lincoln, Nebraska, The Professional Education Series, @1974. pg. 75.

[62]Carl J. Dolce, A Sensible Assessment of Student Rights Paper presented to the American Association of School Administrators Annual Convention, 103rd. Febraury 20-24, 1971.

[63]Ibid.

Preliminary note: From Tinker v. Des Moines Independant Community School District, as cited, pg. 508.

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